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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,568	06/12/2006	Yang Peng	CN030065US1	1752
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EXAMINER BENGZON, GREG C				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/582,568

Applicant(s)

PENG ET AL.

Examiner

GREG BENGZON

Art Unit

2444

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This application has been examined. Claims 1-18 are pending.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/15/2010 has been entered.

Priority

This application claims benefits of priority from PCT Application PCT/IB04/52634 filed December 2, 2004 and Foreign Application 200310123353.2 filed December 15, 2003. (CHINA)

The effective date of the claims described in this application is December 15, 2003.

Response to Arguments

Applicant's arguments filed 10/15/2010 have been fully considered but they are not persuasive.

The Applicant presents the following argument(s) *[in italics]*:

... Pak teaches that the quality of downloaded content is dependent upon factors regarding the characteristics of rendering equipment in addition to a bandwidth factor. However, the quality is not selected in conformance with the bandwidth as the characteristics of the rendering equipment may override any quality selection based on the bandwidth. For example, even if the available bandwidth is greater than 2Mbps but the rendering equipment has a screen resolution of 640x480 and 1 audio channel, then the quality is selected as 64Kbps for transmission of content as any greater bandwidth would be wasted because the rendering equipment cannot process the additional content. Accordingly, Pak fails to teach the element selecting a quality in conformance with the available bandwidth, as is recited in the claims.

The Examiner respectfully disagrees with the Applicant.

The Examiner notes that in the example cited in the Remarks regarding on – Applicant Specification page 7, lines 2-10, ("For example, the content requiring downloading and stored in the network server is the director annotation, thus the corresponding menu includes the following options: A. using the audio with very high quality to express the director annotation, at the bit rate of 256Kbps; B. using the audio with very poor quality to express the director annotation, at the bit rate of 64Kbps; C.

using the subtitles based on text to express the director annotation, at the bit rate of 20Kbps, so that the network server may select automatically from the menu to download information in conformance with the current bandwidth to implement the seamless playback when receiving the current network connection bandwidth.") – the Applicant is indicating that if the detected current network connection bandwidth is *greater than 2Mbps* then the claimed invention is going to select *a quality in conformance with 2Mbps*. However the quality menu does not present any matching options for a quality of 2Mbps.

Given that the Applicant 's claimed quality menu does not present any matching options for a quality of 2Mbps the Examiner respectfully requests clarification regarding how *the network server may select automatically from the menu to download information in conformance with the current bandwidth*.

The Examiner notes that the Applicant remarks above are directed towards adjusting the download *quality in conformance with the available bandwidth* and are essentially re-hashing a previous argument shown below.

Pak is not relied upon to disclose *a monitoring function of the bandwidth, wherein the quality of the content available for downloading is adjusted based on the monitored bandwidth*.

Silen disclosed *a monitoring function of the bandwidth, wherein the quality of the content available for downloading is adjusted based on the monitored bandwidth*.

Silen disclosed (re. Claim 1) detecting available bandwidth; (Silen-Paragraph 19-23) and downloading the requested content according to the bandwidth. (Silen-Paragraph 26-Paragraph 29)

Silen disclosed (re. Claim 1) *monitoring the available bandwidth to adjust a quality of the combined downloaded content and the pre-stored content.* (Silen-Paragraph 33, *'query at regular intervals and determine if bandwidth is still acceptable, and if the bandwidth is not acceptable, adjust the presentation accordingly '*)

Silen Paragraph 27 thru Paragraph 29 disclosed a *downloading process that is adjusted based on the monitored bandwidth limitations of the network.* Silen Paragraph 12 disclosed automatically selecting from a plurality of available data streams dynamically during a presentation according to the currently available bandwidth.

The combination of Pak-Silen disclosed a *quality menu that is independent of the rendering capabilities of the device and wherein the quality menus include entries that refer to the bandwidth limitations of the network.*

The combination of Pak-Silen disclosed a *quality menu including different rendering qualities* (Pak- figure 7, *different rendering options for each particular content requested by the user.* The Examiner notes that the combination of *resolution, display size, and number of channels* represent the equivalent of a rendering quality, and the multiple rendering options are the equivalent to a *quality menu*) *and selecting a rendering quality based on a detected bandwidth.* (Silen-Paragraph 33, *'query at regular*

intervals and determine if bandwidth is still acceptable, and if the bandwidth is not acceptable, adjust the presentation accordingly)

The Applicant presents the following argument(s) [in *italics*]:

With regard to the interpretation of quality being comparable to rendering options, applicant respectfully disagrees. Applicant submits that content of different qualities may have different rendering requirements but the quality, as recited in the claims, is related to a bandwidth requirement and not rendering requirements (of the device). For example, for a Blu-ray Disc player there are certain minimum rendering requirements, and there may be two entries in the quality menu with exactly the same rendering requirements e.g. two streams with the same video resolution and same frame rate using the same compression system (e.g. MPEG-2) but with much different bit rates (bandwidth) due to the choice of compression parameters. From a rendering point of view these two streams are identical but from a quality point of view they are different. Hence, it is believed that the interpretation of quality provided in the Office Action is incorrect.

The Examiner respectfully disagrees with the Applicant.

The Examiner respectfully requests further clarification of these remarks. The Applicant remarks appear to imply that the 'quality' attribute, as recited in the claims, is independent of the rendering requirements and capabilities of the rendering device. Stated another from another perspective, the Applicant remarks appear to imply that the quality attribute, as recited in the claims, is either 1) the quality of the recording/stored

content or 2) the speed of the download and thus is not referring to the quality of the rendering on the device. Following this line of logic the quality of the recording/stored content and/or the speed of the download as a function of the bandwidth would have no impact on the quality of the rendering on the device and no impact on the viewing experience for the user.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., wherein the *quality is related to a bandwidth requirement and not rendering requirements (of the device)*) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Pak Paragraph 45 Figure 2 disclosed *two streams with the same video resolution and same frame rate using the same compression system (e.g. MPEG-2) but with much different bit rates (bandwidth) due to the choice of compression parameters.*

The Applicant presents the following argument(s) [*in italics*]:

...Thus, the subject matter claimed in the quality menu is independent of the rendering capabilities of the device and quality menus include entries that refer to the bandwidth limitations of the network.

The Examiner respectfully disagrees with the Applicant.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., *quality menu is independent of the rendering capabilities of the device and quality menus include entries that refer to the bandwidth limitations of the network*) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The Applicant presents the following argument(s) [*in italics*]:

...even if there were a monitoring function of the bandwidth, the quality of the content available for downloading cannot be adjusted based on the monitored bandwidth.

The Examiner respectfully disagrees with the Applicant.

Silen Paragraph 27 thru Paragraph 29 disclosed a *downloading process that is adjusted based on the monitored bandwidth limitations of the network*. Silen Paragraph 12 disclosed automatically selecting from a plurality of available data streams dynamically during a presentation according to the currently available bandwidth.

The combination of Pak-Silen disclosed a *quality menu that is independent of the rendering capabilities of the device and wherein the quality menus include entries that refer to the bandwidth limitations of the network*.

The Applicant presents the following argument(s) [*in italics*]:

... none of the references refer to the pre-loaded content including a quality menu or that a quality of the downloaded content is transmitted based on the available or detected bandwidth, as is recited in the claims.

The Examiner respectfully disagrees with the Applicant.

The Examiner notes that the quality menu is not displayed to the user and that there is no interaction between the user and said quality menu. Thus the Examiner interprets said quality menu as rendering information.

Sato disclosed (re. Claim 1) reading a pre-stored content providing additional information regarding a content of said downloaded content;(Sato-Paragraph 46-Paragraph 47,*the optical disk contains the disk ID and address information indicating website from which the content is downloaded from*)

However while Sato disclosed pre-stored content providing the URL address of the content source Sato did not disclose *pre-stored content including a quality menu*.

Pak Paragraph 39 disclosed adjusting the download process based on the user rendering device capabilities (Paragraph 34) such as hardware specifications, resolution, display size, and number of channels. Furthermore Pak figure 7 disclosed a content database containing different rendering options for each particular content requested by the user. The Examiner notes that the combination of *resolution, display size, and number of channels* represent the equivalent of a rendering quality, and the multiple rendering options are the equivalent to a *quality menu*.

The Examiner notes that at that at the time of the invention it was well-known to provide rendering options on a DVD and that storing additional information regarding the content on a DVD is also well-known.

At the time of the invention it would have been obvious to include the rendering device options by Pak such as hardware specifications, resolution, display size, and number of channels, with the pre-stored information disclosed by Sato, in for the user rendering device to match the rendering options before making the download request for content. This would an improvement on Pak because in Pak the client environment database does not account for variable network conditions.

Silen provides the disclosure and motivation for accounting for variable network conditions when downloading content over the network.

The motivation for said combination would have been, as suggested by Silen, to enable adjusting a presentation frame size based upon detected bandwidth in order to present the most suitable quality of the download content and avoid having the user make mistakes in manipulating the household appliances to effect a download. (Silen-Paragraph 8)

There would be no substantial innovation resulting in the combination of Pak with Sato-Silen because they are readily modified without breaking or teaching away from the invention and produce the same predictable result.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salmonsén (US Patent 7209874) further in view of Sato (US Publication 2003/0041123) further in view of Pak (US Publication 2004/0267790) further in view of Silen (US Publication US 2002/0116518).

With respect to *'pre-stored content including at least a quality menu of the downloaded content, wherein the quality menu includes a plurality of quality options for the downloaded content'* the Examiner notes that the quality menu is not displayed to the user and that there is no interaction between the user and said quality menu. Thus the Examiner interprets said quality menu as rendering information.

Salmonsén disclosed (re. Claim 1) method for playing a content, comprising the steps of playing the content available for downloading combined with the pre-stored content. (Salmonsén-Column 24 Lines 35-40, *'a web-enabled DVD player is able to combine content from a DVD disk with special network-accessed applications'*)

While Salmonsén substantially disclosed the claimed invention Salmonsén did not disclose (re. Claim 1) reading a pre-stored content *providing additional information regarding a content of said content* available for downloading; detecting available bandwidth; sending a request for downloading the content available for downloading *according to the additional information regarding the content* available for downloading, wherein the request includes the information of the bandwidth, and receiving the content available for downloading according with the detected bandwidth.

Salmonsén did not disclose (re. Claim 1) *monitoring the available bandwidth to adjust a quality of the combined content* available for downloading *and the pre-stored content*.

Sato disclosed (re. Claim 1) reading a pre-stored content *providing additional information regarding a content of said content* available for downloading;(Sato-Paragraph 46-Paragraph 47,*the optical disk contains the disk ID and address information indicating website from which the content is downloaded from*)

Pak disclosed (re. Claim 1) sending a request for downloading the content available for downloading wherein the request includes the information of the bandwidth, and receiving the content available for downloading according with the detected bandwidth.(Pak-Paragraph 39, *the client requests the content service server to download predetermined contents and transmits the environment information to the contents service server*)

Silen disclosed (re. Claim 1) detecting available bandwidth; (Silen-Paragraph 19-23) and downloading the requested content according to the bandwidth. (Silen-Paragraph 26-Paragraph 29)

Silen disclosed (re. Claim 1) *monitoring the available bandwidth to adjust a quality of the combined content available for downloading and the pre-stored content.* (Silen-Paragraph 33, *'query at regular intervals and determine if bandwidth is still acceptable, and if the bandwidth is not acceptable, adjust the presentation accordingly'*)

Salmonsens, Sato, Pak and Silen are analogous art because they present concepts and practices regarding presentation of media over a network. At the time of the invention it would have been obvious to combine Sato into Salmonsens. The motivation for said combination would have been to so that there is no need for the user to enter the address information manually. (Sato-Paragraph 16)

Similarly at the time of the invention it would have been obvious to combine Pak into Salmonsens-Sato. The motivation for said combination would have been to automatically send the client device environment information and avoid having the user make mistakes in manipulating the household appliances to effect a download. (Pak-Paragraph 9)

Similarly at the time of the invention it would have been obvious to combine Silen into Salmonsens-Sato-Pak. The motivation for said combination would have been to enable adjusting a presentation frame size based upon detected bandwidth in order to present the most suitable quality of the download content.

The Examiner notes that while Sato disclosed pre-stored content providing the URL address of the content source Sato did not disclose (re. Claim 1) *pre-stored content including at least a quality menu of the content available for downloading, wherein the quality menu includes a plurality of quality options associated with different bandwidth related rendering qualities associated with the downloaded content*'.

Pak Paragraph 39 disclosed adjusting the download process based on the user rendering device capabilities (Paragraph 34) such as hardware specifications, resolution, display size, and number of channels. Furthermore Pak figure 7 disclosed a content database containing different rendering options for each particular content requested by the user. The Examiner notes that the combination of *resolution, display size, and number of channels* represent the equivalent of a rendering quality, and the multiple rendering options are the equivalent to a *quality menu*.

The Examiner notes that at that at the time of the invention it was well-known to provide rendering options on a DVD and that storing additional information regarding the content on a DVD is also well-known.

At the time of the invention it would have been obvious to include the rendering device options by Pak such as hardware specifications, resolution, display size, and number of channels, with the pre-stored information disclosed by Sato, in for the user rendering device to match the rendering options before making the download request for content. This would an improvement on Pak because in Pak the client environment database does not account for variable network conditions.

Silen provides the disclosure and motivation for accounting for variable network conditions when downloading content over the network.

The motivation for said combination would have been, as suggested by Silen, to enable adjusting a presentation frame size based upon detected bandwidth in order to present the most suitable quality of the download content and avoid having the user make mistakes in manipulating the household appliances to effect a download. (Silen-Paragraph 8)

Thus Salmonsens-Sato-Pak-Silen disclosed (re. Claim 1) *pre-stored content including at least a quality menu of the content available for downloading, wherein the quality menu includes a plurality of quality options associated with different bandwidth related rendering qualities associated with the content available for downloading*’.

Claims 4,7 (re. method) is rejected on the same basis as Claim 1.

The motivation to combine described in the rejection for Claim 1 applies to Claims 4,7.

Claims 10,13,16 (re. a device) is rejected on the same basis as Claim 1.

The motivation to combine described in the rejection for Claim 1 applies to Claims 10,13,16.

Salmonsens-Sato-Pak-Silen disclosed (re. Claim 2,5,8,11,14,17) wherein the request includes a URL of a website on which the downloaded content is stored. (Silen-Paragraph 21)

The motivation to combine described in the rejection for Claim 1 applies to Claims 2,5,8,11,14,17.

Salmonsens-Sato-Pak-Silen disclosed (re. Claim 3,6,9,12,15,18) wherein the detecting step is arranged for detecting throughput of effective information transmitted within a specific period. (Silen-Paragraph 33)

The motivation to combine described in the rejection for Claim 1 applies to Claims 3,6,9,12,15,18.

Conclusion

Examiner's Note: Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please refer to the enclosed PTO-892 form.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GREG BENGZON whose telephone number is (571)272-3944. The examiner can normally be reached on Mon. thru Fri. 8 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on (571)272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Greg Bengzon/
Examiner, Art Unit 2444

